

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington 25, D.C.

In the Matter of the Application of  
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

For authority under Section 214 of the  
Communications Act of 1934, as amended,  
to construct and operate twin deep-sea  
submarine cables between Point Reyes,  
California and Koko Head, Oahu, Hawaii.

FILE NO. P-C-3630

In the Matter of

License authorizing the landing and  
operation of twin submarine cables  
between Point Reyes, California, and  
Koko Head, Oahu, Hawaii, by the  
American Telephone and Telegraph  
Company.

FILE NO. S-C-L-14

OPPOSITION OF AMERICAN TELEPHONE AND  
TELEGRAPH COMPANY TO PETITIONS OF RCA  
COMMUNICATIONS, INC., AND GLOBE WIRE-  
LESS LTD. FOR REHEARING

American Telephone and Telegraph Company, by its attorneys,  
opposes the petitions of RCA Communications, Inc., filed October 7, 1955,  
and Globe Wireless Ltd., filed October 10, 1955, requesting that the Com-  
mission reconsider and modify its orders released September 8, 1955 and  
September 19, 1955 in the above entitled matters.

In support of its opposition, American Telephone and Telegraph  
Company respectfully shows:

1. The Commission's order released September 8, 1955, the sub-  
ject of these petitions for rehearing, recites consideration of comments  
filed by RCA Communications, Inc., and by Globe Wireless Ltd., the present  
petitioners. The positions of these parties and the subject matter here

presented were thus before the Commission and considered by it in making the orders reconsideration of which is herein sought. No new matter has been presented. As is the case with the petition of The Western Union Telegraph Company, rehearing should be denied under recognized principles of orderly procedure.

2. These petitions for rehearing, like the Western Union petition, are predicated upon the assumption that the Communications Act expresses a Congressional policy that a carrier engaged in furnishing telegraph service in the continental United States should not be allowed to furnish telegraph service between the continental United States and Hawaii. The petitioners rely on Section 222 of the Act as expressing such a policy. As pointed out in the American Company's opposition to the Western Union petition, which opposition is incorporated herein by reference (copies having been served upon the present petitioners), no such policy is found in the Act. Section 222 (the Domestic Merger Act) is "ad hoc" legislation, designed to permit the merger of Western Union and Postal Telegraph, and applies only in the case of merger of "domestic telegraph carriers" as specially defined in that Section. No merger is here involved and American Telephone and Telegraph Company is not a "domestic telegraph carrier" to which Section 222 applies.

3. The essential fact, which the petitioners overlook, is that communications between the continental United States and the Territory of Hawaii are domestic, not international. They are "interstate communications" as defined in Section 3 of the Act. The artificial definitions used in Section 222 for the special purposes of that Section cannot make international a communication service that is clearly domestic for all

other purposes. Recognition that communication between the continental United States and Hawaii is domestic and not international provides the basic answer to the contentions of the petitioners.

4. Illustrative of the unsoundness of the reasoning of the petitioners is the following statement in the petition of RCAC (page 10) in referring to the alleged "policy" of Congress as shown in Section 222:

"The mere assertion by the A T & T that service with Hawaii is 'interstate' (reference) does not provide the answer. The intent of Congress in this field is apparent and not confined to the purposes of domestic merger. It is significant that the Communications Act was specifically amended in 1943 to provide for this existing policy of Congress."

First, that service with Hawaii is interstate is not a "mere assertion by the A T & T." That is the express provision adopted by Congress in defining the terms it used in the Communications Act. Nor can justification be found for describing as "international" a service connecting portions of the United States.

But even more fundamental, there is no support whatever for the statement that the "intent of Congress in this field is . . . not confined to the purposes of domestic merger." No source for discovering the intent of Congress is available or permissible other than the words Congress has used in its enactments and its deliberations leading to its enactments. The words of Section 222 leave no doubt that it is limited to the merger of "domestic telegraph carriers." As pointed out elsewhere, the Congressional history of this legislation clearly shows the limited objectives of Section 222 (88 Congressional Record 3415 (1942)).

The true significance of the 1943 amendment of the Communications Act by which Section 222 was added lies in the fact that it is expressly limited to domestic telegraph mergers. It is reasonable to conclude that had Congress intended to establish a broad policy such as that relied on by the petitioners it would have adopted provisions appropriate to such a policy.

Quite to the contrary of the argument made by Globe Wireless (petition, page 4), if a policy is to be recognized which prohibits a domestic carrier from offering its services between portions of the United States, such a restriction should be enacted by Congress and not read into the statute by others.

5. The petition of RCAC (pages 7-9) contends that the Commission in its orders here has disregarded its own precedents. RCAC points to the transatlantic cable projected by the American Telephone and Telegraph Company and to the Commercial Cable Company's new Atlantic cable. Both of these projects involve international communications service and cannot constitute precedents for imposing a restriction upon the furnishing of interstate service.

6. RCAC finds "dangerous implications" in the position of the American Company that it should not be prohibited from providing service between continental United States and Hawaii. In its petition (pages 14-16), RCAC takes out of context portions of certain statements made by the American Company concerning the use of the transatlantic telephone cable for telegraph service. In its letter of November 20, 1953 to the Commission on this subject the American Company said:

"The American Telephone and Telegraph Company has no thought of entering the field of international telegraph

communications and would lease telegraph circuits in the cable for Government department use only upon express order from a Government department to do so. \* \* \* \* \*

We have written at some length regarding this matter because we deem it important for the Commission to know fully our position and to emphasize that we have no desire to enter the field of international telegraph communications."

There has been no change in the American Company's position with respect to international telegraph operations. The American Company's letter of February 3, 1955, from which RCAC quotes, has a meaning quite different from that suggested by the incomplete quotation. This letter was written in opposition to proposed restrictions upon construction permits for radio relay stations between Portland and the Canadian border. After quoting the statement of the American Company's position from its earlier letter, the letter of February 3, 1955 said:

"In view of the foregoing, the American Company submits that a limitation in the authorization for the proposed radio relay facilities to the effect that the facilities shall not be used to furnish telegraph services between the United States and the United Kingdom or points beyond without the prior consent of the Commission is unnecessary."

Far from indicating a change in the position of the American Company, as RCAC appears to imply, the letter of February 3, 1955 is based on a reaffirmation of the American Company's desire to stay out of the international telegraph field.

7. RCAC contends that the authorization of telegraph circuits in the cable will result in wasteful duplication of existing facilities and is not supported by the record. The contention is without merit. It ignores the fact that the record shows that existing facilities are radio facilities and subject to the deficiencies in reliability and quality inherent in circuits of that type. The Office of Defense Mobilization has informed the Commission that telegraph circuits in cable are

needed for national defense and there can be no doubt that telegraph service in general between Hawaii and the mainland will be improved by adding cable circuits to the existing radio facilities. There is usually some duplication of facilities in new construction to improve service, but it is not wasteful and has not been permitted to bar progress in communication service. The test is the public interest and not the private interests of either the applicant or the other carriers. In applying this test the Commission has properly given great weight to the national defense. It is clear on the record that the same public convenience and necessity require telegraph as well as telephone circuits in the cable.

RCAC contends further that as to telegraph service the Section 214 authorization is defective because the recital immediately preceding the ordering paragraph refers only to telephone service and is therefore not a finding that the public convenience and necessity require telegraph service. Other paragraphs do refer to telegraph service and it is clear from the order and authorization as a whole that the Commission found that the public convenience and necessity require telegraph service. Both the Section 214 order and the cable landing license authorize it. We do not believe that the findings are deficient, but if there is any doubt about the matter, the defect is purely technical and should be eliminated by conforming the wording of the order and authorization to the clear intent.

8. The American Company is one of a number of carriers, including the petitioners, which were urged by the Office of Defense Mobilization to undertake the construction of a cable between the mainland and Hawaii for telephone, telegraph and facsimile use in the interest of national defense. The American Company is the only carrier prepared and willing

to undertake construction of such a cable. It has announced its willingness to rent spare telegraph circuits in the cable to any of the telegraph carriers on satisfactory terms. In reliance upon the Commission's grant of construction authority without restriction as to the types of service which can be furnished, the American Company has already committed large amounts of money to this project. The petitioners do not oppose construction of the cable by the American Company with authority to use it for telephone purposes. Without commitment on their part they would be glad to have the American Company undertake construction of a cable which will be available for their use. But they now come forward and propose that the Commission defer to some future date a decision as to whether the American Company should be allowed to use the cable for its own interstate telegraph services. Such a proposal is unreasonable. If the American Company is not to be allowed to use the cable for the domestic services which it furnishes in other parts of the United States, in all fairness that should be made clear at once before further substantial investment is committed.

WHEREFORE, American Telephone and Telegraph Company submits that the petitions of RCA Communications, Inc. and Globe Wireless, Ltd. for reconsideration and modification of the Commission's orders of September 8, 1955 and September 19, 1955 should be denied.

October 14, 1955

Respectfully submitted,

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CERTIFICATE OF SERVICE

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF NEW YORK    )

AGNES V. MC NEIL certifies that on October 17, 1955, she served the attached "Opposition of American Telephone and Telegraph Company to Petitions of RCA Communications, Inc., and Globe Wireless Ltd. for Rehearing" upon each of the parties listed below by mailing a true and exact copy thereof by regular United States mail, postage prepaid, to each such party at the address shown therefor:

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October 17, 1955

Agnes V. McNeil